

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

CHESLEY HAYES, #179415	§	
VS.	§	CIVIL ACTION NO. 6:17cv185
DIRECTOR, TDCJ-CID	§	

ORDER OF DISMISSAL

Petitioner Chesley Hayes, an inmate confined in the Smith County Jail, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging his Gregg County conviction. The petition was referred to United States Magistrate Judge K. Nicole Mitchell, who issued a Report and Recommendation (Dkt. #6) concluding that the petition should be dismissed for failure to exhaust state habeas corpus remedies. Mr. Hayes has filed objections (Dkt. #9).

In the petition, in response to question number ten, Mr. Hayes specified that he had not filed any petitions, applications or motions from the judgment in any court, state or federal. In his objections, he acknowledges he must properly exhaust his state court remedies, but he asserts that Gregg County denied his application. He supported the claim by attaching a letter that he submitted to the Gregg County District Clerk and the reply he received. In the letter, he asked the trial court to appoint him an attorney for an appeal. The court sent him a copy of a document certifying that he had no right to appeal because he pled guilty pursuant to a plea bargain. On the cover letter, the trial court judge explained that he did not have a right to an attorney. The documents submitted by Mr. Hayes do not show that the trial court denied an application for a writ

of habeas corpus; instead, he was denied an attorney for a direct appeal. Direct appeals and habeas corpus proceedings are two separate mechanisms by which he may challenge his conviction. Mr. Hayes has not shown that he filed an application for a writ of habeas corpus in the trial court pursuant to Article 11.07 of the Texas Code of Criminal Procedure. He has not shown that the Texas Court of Criminal Appeals issued a decision on the merits of an application for a writ of habeas corpus filed by him. The present case should be dismissed because Mr. Hayes has not shown that he has exhausted his state habeas corpus remedies.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Mr. Hayes to the Report, the court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and Mr. Hayes' objections are without merit. Therefore, the findings and conclusions of the Magistrate Judge are adopted as the findings and conclusions of the court. It is accordingly

ORDERED that the petition for a writ of habeas corpus is **DISMISSED** without prejudice for failure to exhaust state habeas corpus remedies. It is further

ORDERED that a certificate of appealability is **DENIED**. It is finally

ORDERED that all motions not previously ruled on are **DENIED**.

So **ORDERED** and **SIGNED** this **21** day of **April, 2017**.



Ron Clark, United States District Judge